

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7018

Joint Petition of Business Telecom, Inc.,                    )  
and ITC^DeltaCom Communications, Inc.,                    )  
for Approval of a Transfer of Control                        )

Order entered: 12/7/2004

**I. INTRODUCTION**

On September 22, 2004, Business Telecom, Inc. ("BTI") and ITC^DeltaCom Communications, Inc. ("Deltacom") ( jointly the "Petitioners"), filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of an indirect transfer of control of BTI and Deltacom.

On October 28, 2004, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

**II. FINDINGS OF FACT**

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. BTI was issued a Certificate of Public Good (CPG No. 115) to provide telecommunications services in Vermont on November 24, 1992. Petition at 1.
2. Deltacom was issued a Certificate of Public Good (CPG No. 297) to provide telecommunications services in Vermont on August 20, 1997. Petition at 1.
3. BTI and Deltacom are the Vermont operating subsidiaries of ITC^DeltaCom, Inc. ITC^DeltaCom, Inc., is not a certificated telecommunications carrier in Vermont. Petition at 1.
4. ITC^DeltaCom, Inc., has entered into a stock transaction that will result in the transfer of controlling interest of ITC^DeltaCom, Inc. and, indirectly, the control of its Vermont operating subsidiaries. Petition at 1.

5. Following the transaction, Petitioners will continue to operate under their respective current names and tariffs. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 2.

6. The proposed transaction will promote the public interest by allowing Petitioners access to additional financial and operational resources, thereby enhancing Petitioners' ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at 3.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in the transfer of controlling interest of the parent corporation of Deltacom and BTI. We further conclude that the transfer of control will not affect the services that the Petitioners currently provide to customers in Vermont. Petitioners will continue to operate under their respective current names and tariffs. The proposed transaction will also allow the Petitioners greater access to capital, which may, in turn, result in enhanced competition among providers of telecommunications services in Vermont. The resulting transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

#### IV. CONCLUSIONS

The indirect transfer of control of BTI and Deltacom should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

#### V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of Business Telecom, Inc. and ITC^DeltaCom Communications, Inc., will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 7<sup>th</sup> day of December, 2004.

s/Michael H. Dworkin	)	
	)	
	)	
s/David C. Coen	)	
	)	
	)	
s/John D. Burke	)	

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

Filed: December 7, 2004

Attest: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*